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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

OREGON NATURAL DESERT ASS’N,
AUDUBON SOCIETY OF PORTLAND, and
DEFENDERS OF WILDLIFE,

Plaintiffs,

v.

BARRY BUSHUE, State Director, BLM
Oregon/Washington, and BUREAU OF LAND
MANAGEMENT,

Defendants,

and

CAHILL RANCHES, INC., *et al.*,

Defendant-Intervenors.

Case No. 3:19-cv-01550-SI

**JOINT MOTION TO EXTEND
REMEDY BRIEFING DEADLINES**

**EXPEDITED CONSIDERATION AND
DECISION REQUESTED**

1. Defendants Barry Bushue and the U.S. Bureau of Land Management (“BLM”) (collectively, “Federal Defendants”) and Plaintiffs Oregon Natural Desert Association, Audubon Society of Portland, and Defenders of Wildlife (“Plaintiffs”), have conferred and jointly move to extend the deadlines for filing a stipulated remedy or opening remedy briefs from February 21, 2023 to March 14, 2023, and to extend the response brief deadline from March 14, 2023, to March 28, 2023. Counsel for Federal Defendants has conferred with counsel for Defendant-Intervenors, who have indicated that they oppose this motion. Defendant-Intervenors Cahill Ranches, LLC and Tree Top Ranches, LLC stated that they object to any further extension of the remedy briefing process. Defendant-Intervenors Mackenzie Ranch, LLC, Laird Land Company, LLC, Cow Creek Ranch, Inc., Doug Burgess, Rocking Club Cattle, LLC, V Box Land & Cattle, Inc., and Mark Mackenzie, LLC stated: “MacKenzie Intervenors oppose the further multiple week extension proposed by the BLM because it delays timely judicial review and issuance of a remedial order in this matter. MacKenzie Intervenors would not oppose a short additional extension of the 2/21 opening brief deadline, but they cannot agree to continuing to push out the briefing deadlines as proposed.” In support of this joint motion, Federal Defendants and Plaintiffs state as follows:

2. On December 7, 2022, the Court granted Plaintiffs’ motion for partial summary judgment and denied Defendants’ cross-motions for partial summary judgment. ECF No. 148. The Court held that BLM had “fail[ed] to timely close the 13 key RNAs,” *id.* at 44, and ordered that BLM must “make unavailable to grazing the portions of the key RNAs specified in the 2015 ARMPA without further delay.” *Id.* The Court directed “the parties, after conferring to see if terms can be agreed upon, [to] submit simultaneous briefs regarding an appropriate remedy consistent with the Court’s conclusions in this Opinion and Order.” *Id.*

3. On February 10, 2023 the Court granted Federal Defendants’ and Plaintiffs’ joint motion for an extension of briefing deadlines, making opening briefs due February 21, 2023 and response briefs due March 14, 2023. *See* ECF No. 159.

4. BLM has prepared a proposed remedy consistent with the Court’s conclusions in its Opinion and Order that will “make unavailable to grazing the portions of the key RNAs specified in the 2015 ARMPA without further delay,” ECF No. 148 at 44, and has shared that proposal with Plaintiffs and Defendant-Intervenors. In response to meetings with and input from the Parties, BLM has circulated subsequent updated versions of its proposal to the Parties.

5. Plaintiffs and Federal Defendants have continued to confer regularly regarding BLM’s proposals since their last request for an extension of briefing deadlines and believe they are close to reaching an agreement in principle. Plaintiffs and Federal Defendants also recently reached agreement that presenting any agreed-upon remedy proposal to the Court as a stipulated remedy, rather than a joint brief and proposal, will be the most efficient way for the parties and the Court to resolve the issue of remedy in this case. However, any such stipulation will require additional review and approval by officials in the U.S. Department of the Interior and U.S. Department of Justice, which cannot be completed by the Parties’ current February 21, 2023 deadline for opening briefs.

6. Plaintiffs and Federal Defendants therefore request an extension of the remedy briefing deadlines in this case by three weeks, making opening briefs (or any stipulated remedy) due March 14, 2023 and response briefs (if any) due March 28, 2023. This extension will allow Plaintiffs and Federal Defendants time to finalize their agreement in principle and allow Federal Defendants time to obtain the necessary approvals to file any stipulated remedy with the Court.

7. Plaintiffs and Federal Defendants recognize that Defendant-Intervenor Cahill Ranches, LLC filed its remedy brief (ECF No. 161) on February 16, 2023, and that Cahill Ranches opposes this extension of time. Federal Defendants note that Cahill's 2023 operations will not be affected by the requested extension because the Sucker Creek pasture, on which the Rahilly-Gravelly Key RNA is located, is scheduled to be rested and will not be grazed during 2023 regardless of these remedy proceedings. Plaintiffs and Federal Defendants propose to respond to Cahill Ranches' brief on March 28, 2023 (consistent with Paragraph 6, above) unless the Court would prefer an earlier response, or unless further negotiations result in Cahill Ranches joining in the stipulated remedy.

8. Plaintiffs and Federal Defendants also note that Defendant-Intervenors Mackenzie Ranch, LLC, Laird Land Company, LLC, Cow Creek Ranch, Inc., Doug Burgess, Rocking Club Cattle, LLC, V Box Land & Cattle, Inc., Mark Mackenzie, LLC, and Tree Top Ranches, LLC oppose this motion and may file separate remedy briefing on or before February 21, 2023. Plaintiffs and Federal Defendants do not believe these Defendant-Intervenors' grazing operations will be affected by the requested extension because most affected permittees are not currently scheduled to turn out livestock in any pastures containing or adjoining key RNAs until April through summer 2023, and the earliest turnout in affected pastures is currently scheduled to be April 1, 2023 at the soonest. This extension would allow for completion of any stipulation and/or briefing in advance of turnout on pastures affected by key RNAs. Moreover, in compliance with the Court's December 7, 2022 Opinion and Order to make key RNAs unavailable to livestock grazing without further delay, BLM plans to allow 2023 turnout in these pastures provided temporary measures are in place to ensure livestock do not graze the key RNAs. Federal Defendants have communicated this intent to all Parties since the start of remedy negotiations,

and Plaintiffs and Federal Defendants have agreed on this point in principle. Federal Defendants will also continue to share updated remedy proposals and stipulation drafts with Defendant-Intervenors as negotiations continue. Plaintiffs and Federal Defendants propose to respond to any remedy briefing filed by Defendant-Intervenors by March 28, 2023 (consistent with Paragraph 6, above) unless the Court would prefer an earlier response, or unless further negotiations result in Defendant-Intervenors joining in the stipulated remedy.

Respectfully submitted this 17th day of February, 2023.

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